

1                                    **BEFORE THE ARIZONA MEDICAL BOARD**

2                    In the Matter of

3                    **KENNETH M. FISHER, M.D.**

4                    Holder of License No. 12762  
5                    For the Practice of Allopathic Medicine  
6                    In the State of Arizona

Case No. MD-04-0236A

**CONSENT AGREEMENT FOR  
LETTER OF REPRIMAND**

7                                    **CONSENT AGREEMENT**

8                    By mutual agreement and understanding, between the Arizona Medical Board  
9                    ("Board") and Kenneth M. Fisher, M.D. ("Respondent"), the parties agree to the following  
10                   disposition of this matter.

11                   1.     Respondent has read and understands this Consent Agreement and the  
12                   stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement").  
13                   Respondent acknowledges that he has the right to consult with legal counsel regarding  
14                   this matter.

15                   2.     By entering into this Consent Agreement, Respondent voluntarily  
16                   relinquishes any rights to a hearing or judicial review in state or federal court on the  
17                   matters alleged, or to challenge this Consent Agreement in its entirety as issued by the  
18                   Board, and waives any other cause of action related thereto or arising from said Consent  
19                   Agreement.

20                   3.     This Consent Agreement is not effective until approved by the Board and  
21                   signed by its Executive Director.

22                   4.     The Board may adopt this Consent Agreement of any part thereof. This  
23                   Consent Agreement, or any part thereof, may be considered in any future disciplinary  
24                   action against Respondent.

25                   5.     This Consent Agreement does not constitute a dismissal or resolution of other  
                 matters currently pending before the Board, if any, and does not constitute any waiver,

1 express or implied, of the Board's statutory authority or jurisdiction regarding any other  
2 pending or future investigation, action or proceeding. The acceptance of this Consent  
3 Agreement does not preclude any other agency, subdivision or officer of this State from  
4 instituting other civil or criminal proceedings with respect to the conduct that is the subject  
5 of this Consent Agreement.

6         6. Respondent consents to the entry of the order set forth below as a compromise  
7 of a disputed matter between Respondent and the Board, and does so only for the  
8 purpose of terminating the disputed matter by agreement. The Consent Agreement has  
9 been entered by the parties for no other purpose other than this Board's proceedings. The  
10 Consent Agreement and its contents are not intended or made for any other use, including  
11 other state or federal government regulatory agency proceedings or any other court  
12 proceeding in the State of Arizona or any other state or federal court. Respondent  
13 acknowledges it is the Board's position that, if this matter proceeded to formal hearing, the  
14 Board could establish sufficient evidence to support a conclusion that certain aspects of  
15 Respondent's conduct constituted unprofessional conduct. Respondent agrees not to  
16 contest the validity of the Findings of Fact and Conclusions of Law contained in the Order  
17 in any present or future administrative proceedings before the Board or any other state  
18 agency concerning the denial or issuance of any license or registration required by the  
19 state to engage in the practice of any business or profession.

20         7. Upon signing this agreement, and returning this document (or a copy thereof) to  
21 the Board's Executive Director, Respondent may not revoke the acceptance of the  
22 Consent Agreement. Respondent may not make any modifications to the document. Any  
23 modifications to this original document are ineffective and void unless mutually approved  
24 by the parties.

1 8. If the Board does not adopt this Consent Agreement, Respondent will not  
2 assert as a defense that the Board's consideration of this Consent Agreement constitutes  
3 bias, prejudice, prejudgment or other similar defense.

4 9. This Consent Agreement, once approved and signed, is a public record that will  
5 be publicly disseminated as a formal action of the Board and will be reported to the  
6 National Practitioner Data Bank and to the Arizona Medical Board's website.

7 10. If any part of the Consent Agreement is later declared void or otherwise  
8 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force  
9 and effect.

10 11. Any violation of this Consent Agreement constitutes unprofessional conduct  
11 and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) ("[v]iolating a formal order,  
12 probation, consent agreement or stipulation issued or entered into by the board or its  
13 executive director under this chapter") and 32-1451.

14  
15  
16   
17 KENNETH M. FISHER, M.D.

DATED: 1-12-09

**FINDINGS OF FACT**

1  
2       1.     The Board is the duly constituted authority for the regulation and control of  
3 the practice of allopathic medicine in the State of Arizona.

4       2.     Respondent is the holder of license number 12762 for the practice of  
5 allopathic medicine in the State of Arizona.

6       3.     The Board initiated case number MD-04-0236A after receiving a complaint  
7 regarding Respondent's care and treatment of a forty year-old female patient ("CR"). On  
8 June 23, 2003, CR presented to Respondent for prescription refills and complaining of  
9 night sweats. Respondent examined CR for night sweats, but did not find any rashes or  
10 dermatologic indications that might help explain them. At the completion of the  
11 examination, CR mentioned she had a facial lesion. Respondent examined the lesion and  
12 his differential diagnosis was solar keratosis. Respondent described the lesion as an  
13 actinic patch on the left cheek; however, there was no documentation explaining why  
14 Respondent described the lesion as an actinic patch. Specifically, Respondent did not  
15 provide the size, appearance and shape of the lesion or the length of time CR had the  
16 lesion. There was also no evidence in CR's record that Respondent performed a thorough  
17 cutaneous physical examination prior to making the differential diagnosis.

18       4.     Respondent's initial plan was to do a punch biopsy to determine if the lesion  
19 was benign; however, CR opted for cryotherapy and Respondent agreed to perform the  
20 treatment. There was no evidence in the record that Respondent discussed why he  
21 recommended cryotherapy or the risks associated with it, specifically skin scarring or  
22 discoloration.

23       5.     Cryotherapy is commonly used to destroy benign lesions, like viral warts,  
24 seborrheic keratoses or premalignant lesions, like actinic keratoses by applying a Q-tip  
25 dipped in liquid nitrogen to the lesion for three to five seconds to the dermis. Respondent

1 applied liquid nitrogen directly to CR's lesion with a Q-tip for twenty seconds, which was an  
2 excessively long period of time. CR subsequently experienced some scarring and  
3 pigmentary changes at the area of the lesion.

4 6. The standard of care for diagnosing skin lesions requires a physician to  
5 perform a thorough cutaneous physical examination followed by a shave or punch biopsy  
6 of any suspicious lesion. The standard of care requires a physician to apply cryotherapy  
7 for the proper amount of time so as to not cause scarring.

8 7. Respondent deviated from the standard of care because he did not perform  
9 a thorough cutaneous physical examination and he did not perform the scheduled punch  
10 biopsy on CR. Respondent did not apply cryotherapy for the proper amount of time.

11 8. As a result of Respondent's failure to appropriately diagnose and treat CR,  
12 she suffered permanent scarring and pigmentary changes.

13 9. A physician is required to maintain adequate legible medical records  
14 containing, at a minimum, sufficient information to identify the patient, support the  
15 diagnosis, justify the treatment, accurately document the results, indicate advice and  
16 cautionary warnings provided to the patient and provide sufficient information for another  
17 practitioner to assume continuity of the patient's care at any point in the course of  
18 treatment. A.R.S. § 32-1401(2). Respondent's records were inadequate because there  
19 was no documentation explaining why Respondent described the lesion as an actinic  
20 patch and there also was no documentation that Respondent discussed why he  
21 recommended cryotherapy or the risks associated with it.

#### 22 **CONCLUSIONS OF LAW**

23 1. The Board possesses jurisdiction over the subject matter hereof and over  
24 Respondent.

2. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401 (27)(e) ("failing or refusing to maintain adequate records on a patient.") and A.R.S. § 32-1401(27)(q) ("any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.").

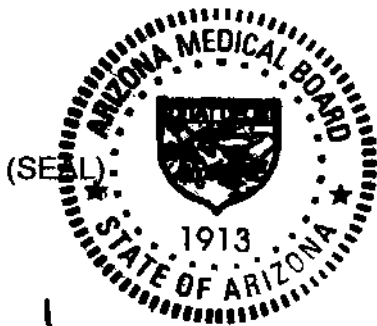
**ORDER**

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand for inappropriate diagnosis and treatment of a skin lesion and for failure to maintain adequate records.

2. This Order is the final disposition of case number MD-04-0236A.

DATED AND EFFECTIVE this 4<sup>th</sup> day of Feb, 2009.



ARIZONA MEDICAL BOARD

By

  
Lisa Wynn  
Executive Director

ORIGINAL of the foregoing filed  
this 4<sup>th</sup> day of February, 2009 with:

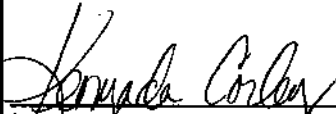
Arizona Medical Board  
9545 E. Doubletree Ranch Road  
Scottsdale, AZ 85258

EXECUTED COPY of the foregoing mailed  
this 4<sup>th</sup> day of February, 2009 to:

Calvin L. Raup  
Shughart, Thomson & Kilroy  
3636 North Central Avenue, Suite 1200  
Phoenix, AZ 85012

1 EXECUTED COPY of the foregoing mailed  
2 this 4<sup>th</sup> day of February, 2009 to:

3 Kenneth M. Fisher, M.D.  
4 Address of Record

5   
6 Investigational Review